

/111 cont./

231 the acorn of the holm oak, abuhu, the berry of the juniper,
222 abelhas, dear to the goats, and whose dessication and grinding
262 give man a substitute flour. Normally, the dried turnips,
akhchawn, which play such a great role in the montagnard econ-
omy, are common to man and animal. The beast is not only
the neighbor, but the messmate of the village citizen. On the
246 other hand, this society is familiar with what we call artificial
fodders. Very rarely still lucerne, which, however, the Sous
practices (1).

1. But this lucerne, lfesst, did it not formerly
serve as human food? Cf. the curious observa-
tions of J. Mathieu, "Étude des conditions de
vie dans une palmeraie du Moyen Ghéris et
contrôle de la nutrition de ses habitants /Study
of the conditions of life in a palm grove of the
Middle Ghéris and verification of the nutrition
of its inhabitants/," Bulletin de l'Institut
d'Hygiène du Maroc, I-II, 1939, p. 31.

What one finds here is the fleshy grass (poa bulbosa), maintained
in the "damp meadow," az'mu. The mowing of the az'mu inter-
venes after maturity and deposit of the grains on the spot. One
gathers there a Gramineae called tàg^wlast, a name that approxi-
mates that of barley cut green for animal fodder (àg^wlas). These
prairies are prepared in the shade of olive trees, and especially
of walnut trees, in all the upper Seksawa: a. Mh'nd, Fensu,
Wanz'id', Iguntar, Agersili, Tabgurt. The fodder is kept in a
[343] storehouse until the time of tillage, when it serves to strengthen
the animals.

246 Finally the mountain pasturages give rise to a wise organiza-
675 tion of "défens" /prohibition against cutting/. The ban

/111 cont./

- 246 prohibiting cutting or opening the ag^wmi constitutes an important
675 event in village life (2).

[171]

2. A good description of the Kabyle "summer pasturages," of the prohibition against cutting them, etc., all very analogous to our ag^wmi, in M. Rémond, Djurjura, terre de contraste /Djurdjura, land of contrast/, 1940, p. 221 sq. It will be instructive to compare these Maghrebi practices with the same Pyrenean practices: for Andorra, J.-A. Brutails, Études sur la condition des populations rurales du Roussillon /Studies on the condition of the rural populations of Roussillon/, 1891, p. 253: it is a matter of the devèse, "place removed from common enjoyment" (cf. Chleuh /Shluh/: ag^wdal).

- 246 Any transgression is punished by an "amende," /112/ az'z'ayn.
675 The pasturage agreements are among the essential circumstances
634 of the external law of the groups. Thus the Tichka, summer pasturage, bitterly disputed between tribes, has doubtlessly animated for a very long time leagues and ententes, "lies et pas-series" (as our Pyreneans say), which mark this history. It was
[175] the subject of a pact between a. H'adduyws and Idma in 1701. Even when the debate reaches the military or judiciary plane, that is to say, in cases of tension between groups, a rural order also acts, with an importance that one can measure by thinking of the vital necessities that it takes care of. It only rarely gives
675 rise to writing, because it is of a different plane. One will be
221 more surprised consequently that the ententes for transhumance,
178 although coming out of this international law, refer still today to unseizable conventions and unnamed laws so much the stronger as their inconsistency and their unilaterality are now discovered

/112 cont./

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178 by the users themselves. This is, moreover, not a trait especially Maghrebi. Elsewhere, too, these arrangements reflect an "old, almost imperfectible technique" (1).

1. J. Blache, L'homme et la montagne
/Man and the mountain/, 1923, p. 19.

which has struck all observers of the altitude life.

233 A problem that this society presents to us as settled once and
241 for all is in any case that of the marginal relations between the
pasturage and the tillage (2).

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171 2. The difficulty of these relations and the
historical incidence of these very difficulties
is one of the themes of the great work by
Marc Bloch, Les caractères originaux de
l'histoire rurale française /The original char-
acteristics of French rural history/, 1931.
The same guiding thread, for Spain, in the
study of J. Klein on La Mesta /The Associa-
tion of Livestock Raisers/; for the Maghreb,
in that of Bernard and Lacroix, L'évolution
du nomadisme en Algérie /The evolution of
nomadism in Algeria/, 1905; for Sardinia,
M. Le Cannou sees there the explanation for
the famous system of the "vidazzoni," Pâtres
et paysans de Sardaigne /Shepherds and
peasants of Sardinia/, 1941, pp. 134 sq. On
the "spirit of pasturage," R. Dion, Essai sur
la formation du paysage rural français /Essay
on the formation of the French rural country-
side/, 1934, p. 55.

/113 cont./

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675Practice of the agg^wmi, "pasture in defense"

Name of the <u>taqbilt</u>	Name of the village	Place of pasture	Duration of the placing in defense	Comments
I. Geryun.	The ensemble.	Tichka (also called Tuchka).	From snow-fall to a <u>yulyuz</u> date conventional among tribes.	International pasture.
a. H'ad-duyws.	{ Tasa. Fensu.	Amerdul. Aziwal.	March-July. --	Custom of the <u>talddrar</u> .
Iguntar. a. Lh'sen. a. Mh'nd.	{ The ensemble.	Talbur n- H'sayn.	--	
Idma.	Asikis.	Agersili.	--	Custom of the <u>talddrar</u> .
Imt'ddan.	Ad'erd'ur.	Tasila.	--	
	Anchkir.	Inraren	--	
	{ Tasselli. The ensemble.	Z'dinin. Tameksut. Afuzar.	-- -- --	

221 This short-term transhumance, where one does not leave the
 233 limits of the canton, is a sort of amplifying commentary on the
 241 valley-bottom life. It takes place at the end of the summer and
 [634] lasts as long as possible: until the rain and frost are heaviest. In
 a general fashion only the shepherds take part in it. But the
 proximity of the village makes the visits of the master frequent.

/163 cont./

241 of mercantile economy. The case is all the more striking be-
 441 cause, in the old rural order, a number of things are removed
 237 from commerce: milk, for example, which is never sold, and
 straw, which is carelessly left on the fields. But the animal ma-
 • (675) nure not only forms the tacit counterpart of the pacts of trans-
 humance or of common pasturage, but can even give rise to
 ciphred dealings.

(692) These particularities appear in full light in an arbitral de-
 cision of the fqih Belwâh', of the Bas /Lower/ Demsira, a magis-
 trate whose montagnard appurtenances (he was born in the wild
 valley of the a. Mh'nd u Musa, which the Bwibaun separates
 from our a. Lh'sen) render very revealing judgments of the view
 of a milieu intent on compromising between the law and the an-
 cestral custom.

691 It is a matter of litigation between a sâkin, "a precarious
 692 resident," and the master of the house, who suddenly asks him
 237 for a rent of equivalence. The other one retorts by demanding
 427 the price of the manure of his beasts. The fqih, by dint of cita-
 tions from Amal, came to establish that the first demand was
 unjustified, and the second one justified. He knowingly refers to
 the rural custom, which does not recognize rents for this kind of
 installation: without doubt (and although this is unavowed) be-
 cause such pacts depend upon the clientele and thus contain a
 deep antinomy with the contractual law. On the other hand, it
 is not at all the same for animal manure: this is a commodity,
 which comes to the owner of the animals and, on the other hand,
 cannot enter in as a gracious counterpart of hospitality.

237 Such a case in point gives a measure of the importance that
 241 fertilizer assumes in this system. The great suppleness, if I may
 (191) venture to say it, of the European peasant economy, to wit, the
 correlation between livestock breeding and cultivation, is thus
 found again here, evident and calculable. The accumulation of
 (342) the manure in the stable, agnur, often arranged on the ground
 floor of the house, its handling, and its being placed in piles be-
 fore the tillage of autumn and spring, its dispersion on the field:
 so many practices to which the high-valley cultivator devotes

121 /248 cont./
not so simple. It will be necessary to split up the two studies, because religion and law present, in their present state, the trace of different evolutions and even of different systematizations.

/249/ II. Nonfigurative Sacred "and Prelaw" (1)

1. I have borrowed the expression of prelaw from L. Gernet, "Droit et prédroit en Grèce ancienne /Law and prelaw in ancient Greece/," Ann. Soc., 1948-49, pp. 21 sq.

The Sacred and the Rural Order

539 /The following paragraph is in small type in the original
716 source./ "One day -- this was in the time of the siba -- an old
823 black man came to us seeking refuge. We offered him shelter without otherwise asking about his origin. He was treated rather meanly. How shocked we were the next day to learn from one of our servants that he had spent the entire night in a trance! My father went to him to apologize for the poor fare. We began to fear vengeance from this unrecognized personage. But all our offers could not overcome his humility. He revealed to us that he knew all the places of the earth and proposed describing them to us. From that time his saintly quality began to impress us. My father, eager to profit from his baraka, led him into our orchard, which lacked water. The old man assured us that a hitherto hidden spring would gush forth there if one dug at the place that he would indicate. Still better, he offered to make a contract with us. If water were found, it would be necessary to furnish him an annual payment. In the opposite case, he put himself under the obligation to us to demand, in writing, that he be buried alive in this hole that we would have dug in vain. The contract was drawn up in good and due form, and my father set off for Marra-kech to recruit workers and to buy tools. Upon his return, the

/276 cont./

794 Sometimes, on the contrary, he collects the right to a prefer-
875 ence share from the harvest: 1/40 as in a. Lh'sen, 1/30 as in
212 Imt'ddan, etc. /277/ Just as the dues to the saints establish, not
the rudiments, but a meticulous system of fiscality, the recom-
pense of the t't'olba, like the collection and the management of
the dues, properly establishes in the group an outline of adminis-
[23] tration. That fully emerges from regular institutions, such as the
periodic slaughtering of fresh meat, luzi^ct, itself in close rela-
tions, though not constant, with the sacrifice to the saints,
[675] tighersi. There, as we have shown elsewhere (1).

1. J. Berque, "Un glossaire arabo-chleuh du
Deren (XVIII^e siècle)," R. afr., 1950, pp. 383
sq., where these ceremonies are described in
full. Bibl. of luzi^ct, p. 383, n. 25.

the contractual aspect, appearing in notarial technique, predom-
inates over all the others.

794 It is the same for the "stipulations" to the saints, chchard'.
675 One will note the identity of this term with that designating the
[585] authorized marriage settlement to the bride over and above the
amerwas. Thus there we are in full agreement. An act recorded
175 at the sanctuary of sidi Abderrah'man b. Messâud, in the Mtugga,
794 illustrates the way in which the great saint of the a. Daud, sidi
796 Sâid u Abdennâim, founder of a "maraboutic principality" in the
675 Sous, used it to the end of his days. He summoned the H'âh'a
[796] and the Mtugga to his bedside. After a pious homily, he re-
quested of them the annual celebration of a mârûf at the begin-
ning of the month of "Berbère /Berber/ March," mars ^cajâmî
(sic). They agreed in a great burst of contrition. And of each
tribe to take it upon itself spontaneously to pay to the descendants
of the saint -- that one barley, that one butter or oil. The whole
was styled khidma, "service," and churûf, "stipulations." That
took place during the tenth century of the Hegira, that is, our
sixteenth century. And although precisely this saint has no client
among our Seksawa, the text applies to them equally. It indicates

/277 cont./

the usual procedure of these obligations of group to patron. Such testimony is rare: the beneficiaries keep them secret (2).

2. We have been able, however, to procure for ourselves at the zaouia of the Mez'ud'a one of these acts, which we reproduce as Figure 10, page 390.

Perhaps even many of these contracts are pure etiology of a custom in being and for which one should have tried to place the origin and to find the explanation.

Let us pass now to a second element of institution: these mārif-s of which there has already been mention many times. This word, used here rather than that of musēm, has been attested since an ancient epoch and paradoxically combines the Koranic notion of "good" and that of "customary usage." Veritable play on words, which seems intended, since a number of customary codifications have feigned to be based on it and sometimes even yet it is invoked by /278/ /Fig. 10 appears here/ /279/ innovating jurists. The mārif is the seasonal rite incumbent on a group with regard to a saint. It usually includes a blood sacrifice, tighersi, but differs from other gatherings, such as the tinubga or tiwilt, which have no religious import. The chchard' is found in the old acts in the form of testamentary prescriptions, accompanied by invocations and conditional curses: last words of the dying saint to his servants. Sometimes accompanied by homilies, it constitutes, for multiseccular lapses, the charter regulating the relations of a group with the local representative of the sacred.

Several saints possess an estate, ras l-māl, maintained from year to year by the sale of pieces of meat. This sale is done at auctions. It releases the emulation, itself ostentation, which this kind of concourse calls up. But the money owed is almost never demandable until the following year. An embryo of credit thus forces its way through. It includes inscription on written rolls and the montagnard notariate is actively occupied with it. Elsewhere we have described the demarcations between the profane

(TEXT CONTINUED ON PAGE 391)

/341 cont./

- 584 3) the feast called asghurt: it gives to the ensemble its name, which etymologically evokes a "ritual cry."

Beyond the presents handed over on this occasion, arising from an economy of the gift and of the feasting, the young man owes to the girl during this period clothing and ornaments, according to the customary modalities. He contributes to her support at the domicile of her parents. In exchange, she owes him a certain intimacy in general not total, and joins him in various practices bringing into play age classes and rites of passage: young people's feasts and evenings, applications of henna. The unilateral rupture of this state by the young woman entails on her part the obligation to give back the gifts and expenses incurred.

- 585 b) The "nuptials," tameghra, include a ritual part, a statutory part, and a conventional part.

Ritual part:

- 1) The tarzift: the delivery of propitiatory gifts by the young man to his parents-in-law, giving rise to a "procession," and sometimes to simulated pillage;
- 2) the processional conveyance of the young woman to the marital house, this is the šid n-tslit;
- 3) the exposition of the dotal contribution of the bride, the šid uruku;
- 4) the utterance of the fātih'a, Koranic formula accompanied by wishes of good augury;

- /342/ 5) The consummation: this is the šid ukechchum, sanctioned, if it is a matter of a virgin, by the yo-ho /Fr. youyou/ of the matron on duty, taghorit, and a new gift, lh'aqq n-qqbāh'.

Statutory part:

- 585 1) Conclusion of the amerwas: promise by the bridegroom to the
 675 bride to have to pay her, in case of dissolution of the mar-
 586 riage, a sum uniformly fixed by the custom of each tribe, and varying from one to the other: in Seksawa, 6.50 for a virgin, 3.25 for a nonvirgin;

/344 cont./

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Even more instructive is the indefinite bringing forward of the payment of this amerwas, deemed to correspond to the qadâq. It is known that in fiqh at least a part of the qadâq must be paid in cash. Absolutely not in the Sous. The fact that the payment of the amerwas as regards the totality is to be postponed there until the dissolution of the marriage: 1) clearly dissociates it from the consummation of the marriage, and thus even removes it from its orthodox role of canonical purifier of the sexual act (2);

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2. And nevertheless a "marabout" jurist such as an-Nâçirî, Ajwiba, ms. of the zaouia of the Mez'ud'a, p. 40, l. 14, must consider that the indefinite carrying forward of the integrality of the qadâq (in this case the amerwas) is without inconvenience and does not render the marriage illicit.

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Let us recall — without, of course, wishing to establish a comparison — that Moroccan Hebraic law brings these diverse notions together under the name of kitubba. The latter, quite like the Berbère /Berber/ amerwas, is demandable only in case of dissolution of the marriage. The "forfeiture" aspect is moreover more pronounced in it. Cf. on the kitubba, E. Malka, "La constitution du douaire par contrat de mariage /The constitution of the marriage settlement by marriage contract/", Revue marocaine de droit, 1952, pp. 209 sq.

2) leads one to seek in other traits of Chleuh /Shluh/ marriage the veritable inaugural formalities.

The invariability of the amerwas in one and the same tribe (3)

3. Westermarck has already noted it, Les cérémonies du mariage au Maroc /Marriage ceremonies in Morocco/, 1921, pp. 61, 67. He even gives a

/344 cont./

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/footnote 3 continued/ remarkable example: that of the Glāwa, where his quantum varies according to the subgroups (p. 62). In case of flight by the married woman, the rate of compensation varies, he writes, according to the tribes or the subdivision of tribes (pp. 57 sq.). The Arab jurists cite the practice of an invariable qadāq as tainted by Bedouinism. Cf. at-Tasūfī, Comm. Tuh'fa /Commentary of the Tuh'fa/, 1355 ed., t. I, p. 247, l. 6 sq., and 27 sq., with citation of this Abū 'Alī whom we always find as revealer of Moroccan authenticity: lā yuzādu 'alay-hi li-jamāli-ha wa lā yanquḡu li-qubh': "beauty or ugliness is of no importance," the famous cadi says, smiling a little!

is the second of the characteristics that set it opposite the qadāq. The amount of the /345/ latter in Arab countries is not statutory, but contractual. But has it always been the same? Here again we find, attested to by the jurists, an ancient Bedouin stage, where the practice of a qadāq, invariable and payable only upon the dissolution of the marriage, would have been general at a certain time, since authorities as scattered as Ibn 'Arafa (Tunis), al-Qawfī (Fès), and cadis of Sijilmāsa are cited with respect to this (1).

1. At-Tasūfī, Comm. de la Tuh'fa, 1355, t. I, p. 250, l. 4 sq.

Indications Concerning the Anterior State

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In any case, the uniformity and modicity of the amerwas, its liaison, not at all with the consummation, but indeed with the dissolution of the marriage, lead, at least for the Chleuh /Shluh/ group, to the hypothesis that it may be a matter here of an element superposed, perhaps by way of authority, upon an

/345 cont./

675 autochthonous institution, survivals of which are to be found in
585 the asghurt and where it would as yet be only incompletely dis-
586 solved. The comparison of the institutions only ends in an im-
121 passe there, for we are back to the historical problem of the
penetration of the fiqh in this region of Morocco.

779 To the dossier, still quite light, of this discussion, I shall
792 bring only one contribution, but precise and datable: this is a
175 text taken from the Nawāzil of the Cheikh /Sheik/ Mah'ammad
585 ibn Nāqir (d. 1674), master of a great religious brotherhood, and
initiator from the Moroccan South.

675 /The following paragraph is in small type in the original
source. / The Cheikh married persons who had come to rely on
him. He began by questioning two among them, who were of
the same tribe, on the amount of the qadāq in their country at
the same time as on their matrimonial usage. After many si-
lences, they answered him, "We are of your faith and your flock.
Do what you judge good to do." "As for us," said the Cheikh,
"our practice is simple. I myself once gave one of my female
relatives in marriage without asking for anything more than a dish
of couscous for the clerks. Such was in fact the custom of our
ancestors. But I have reformed it and abandoned it in order to
adhere to the sunna of the Prophet. Our present practice is one of
the simplest, be it a matter of the banquet or of the qadāq. I
have fixed the latter at three mithqāl-s of money by weight." He
then added: "Where is the representative of the husband?" He
was pointed out to him. He then requested witnesses, and when
they were before him, in the presence of the representative of the
woman, he declared: "Praise God. We praise Him and by Him
we guide ourselves. Witness that I have married such-and-such a
daughter of so-and-so and such-and-such a son of so-and-so, both
from such-and-such a country, within the rights and stipulations
of the woman, the sunna of the Prophet, and against legitimating
qadāq (2)."

2. Mah'ammad b. Nāqir ad-Dar^cī, Ajwiba, ms.
of the zaouia of the Mez'ud'a, p. 40, l. 11 sq.

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/346/ This took place in the middle of the seventeenth century. It is a matter of a pious personage, a holy man and converter. His family is from the Drâ, from which the Saâdians had surged forth in the preceding century in an intense religious and martial fermentation. Let us not take this evidence for anything other than what it is: an isolated trait in the present state of the examinations. But, as such, it does not cease to be disturbing, as much by what it reveals of the practices of the period as by its orthodoxy, still of a bizarre taste.

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But do we not find the trace of former organizations in the Z'init' fair for wives? According to some evidence from the fourteenth century, the saint camped surrounded by two separate groups: the women and the men. It is not impossible that this was an indication of a classificatory rite. Even now the promise exchanged by the fiancés during the exaltation of the feast and the sacrifice near the tomb of Lalla Aziza creates an irremissible obligation. A man from the Gedmiwa who had ventured to escape from it was found a few years ago hung in his room. Trace of former collective functions? The written sources impose a salutary lesson of prudence over this point in the hypothesis.

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/The following three paragraphs are in small print in the original source./ An act of 916 Heg.: 1510, and one which offers some interest by reproducing this hapax that seems to have been, since Ibn Khaldûn, the name of the Genfisa, is a marriage contract, drawn up according to the habitual pomp of the style of the city. It anticipates a cadâq of 200 dinars, an unheard-of sum for the period. To which are added clothes, jewels, slave. The total is taken care of by the father of the husband, along with the production of real guarantees. A naqd is paid. There are stipulated as the responsibility of the husband, a curious thing in testimony emanating from such an ancient and supposedly such a rough milieu, "pleasantness in relations, the instruction of the woman in her religion, and in attention to the good." This text, by the style, the content, and, one might say, the sentiment, is discordant in these remote cantons.

Another act, more recent, and coming from the great family of the upper valley, this haunt of authenticity that the a. D'alh'a

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are. It dates from 1299 Heg.: 1824. The formulary perfection is even more marked here: beginning eulogies in rhymed prose, wishes of benediction and good augury, favorable description of the two married people. The cadāq is some 50 mithqāl-s in money, cabbāsiyya.

Another contract, of which use has already made, and which is from 1042 Heg.: 1630, also carries a cadāq high in cash and kind. It is true that it is a matter of a young lord, ach-chaykh ach-chābb, a singular expression that undoubtedly sets one on the track of understanding.

It is evident that a particular style: literary wording, numerical hyperbole, care taken in preserving the document, must have presided over the marriage agreements insofar as they /347/ escaped statutory banality. In other words, it must have been a matter of exceptional cases: the sons and daughters of chiefs or marabouts, emerging from the milieu, but that cannot infringe statistically the general rule. Such testimony does not only reflect a characteristic variety. Basic contrasts have been able to force their way out at all times in the mountains, between the villein and the lord, the traditionalist and the odd person, the impious and the scholar. The milieu had to find an escape from the dissatisfactions caused by the inequality of culture or fortune.

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However that may be then, not only in the division of the acquiescence, but even, in certain cases, in the matter of the nuptial gift, the Seksawa woman knows an eminent economic dignity. One has seen above how the institution went beyond the Mussulman pattern, upon which, after the event, it was desired to model it. It went beyond it as much in the ceremonial richness, magico-juridical foundations, statutory egalitarianism, as in the contractual acuity. Nothing makes the originality of the system stand out better than its opposition to another system, the Kabyle one (1).

1. Essentially Hanoteau and Letourneux, La Kabylie et les coutumes kabyles /Kabylia and Kabyle customs/, 1873, t. II, pp. 148 sq., and the criticism of it by G.-H. Bousquet,

/379 cont./

634 We are in Idaw Geryun around 1836. The moqaddem ex-
451 presses himself as a delegated administrator. And he finishes
[652] with a negative balance: the sums advanced by himself!

Such documents reveal a singular advancement of the ad-
ministrations in certain of these mountain groups. An account-
[654]ancy implying the use of writing is demanded from the com-
munal magistrate, without the slightest abuse being allowed him.
Undoubtedly, as has been said, parallel to this vein runs another
vein: that of the pressures of personal power. The remarkable
thing is that the former was never abolished and continued to
represent, in the worst adventures, an aspiration never dis-
courageed.

634 The attributions of the city are not only internal, but also of
international law. Here again the moqaddem and the ait Arbain
represent the interests of their group. Among the most frequent
pacific acts in which they could take part, and which have left
us written traces, let us cite:

175 /The following two paragraphs are in small type in the orig-
619 inal source./ In 1136 Heg.: 1724 an agreement between the
675 Idaw Geryun and the people of Uzaga (upper ait H'adduyws) on
634 the subject of a limit of forest use, maçālih' al-ghāba. Guar-
antors are furnished respectively — old men for the /380/ most
part, ifqiren — as security against trespass or robberies occurring
on the confines; also as respect for the acorn grove's being put in
defense. The agreement carries a penal clause, a considerable
one of 1,000 onces to one who breaks it.

Agreements concerning pasturage and water rights on the
Tabgurt (acts of 1114 Heg.: 1702 and 1115 Heg.: 1703) of the
Idma and a. H'adduyws jemāas. Elsewhere I have published and
analyzed these acts. Here again we find the principle characters
[613] noted up to here: presence of the ikhs delegates, of the moqad-
dem-s, climate of detailed discussion mixed with an archaic
communitarian ardor.

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considerations upon the tariff for facial wounds, evaluated at 1/20 of the dîf, that is, 72 Abbassian mithqâls-s. An opinion by a fqih from Arghen already mentioned (act of Tinwalin of 1198 Heg. : 1784) is based conjointly on the Tuh'fa and on "what rules in the matter of Corf and of Câda in the country of Sous, from Fès /Fez/ to the Sous, in the matter /382/ of fines and of inqâf: and this is licit for these countrymen."

This pedantic contamination between the statute and the native law is not alone in revealing the true nature of these codifications. From what one is going to see now, even though it is only a matter of indications or traces, will doubtless stand out traits probably more authentic. The preamble of all these texts has already been noted. It is an agreement recording the unanimity of a group on its maçâlih', on its property. One knows indeed what use Malékite /Maliki/ empiricism can make of this latter notion. But enough allowance has been made for the religious impregnations of the system for one also to seek to disclose there another inspiration, that of a collective pragmatism, making sure of its legitimacy by the pursuit of its material and moral interests. This legitimacy manifests itself by social contract. This is not an accident. The contractual aspect is in fact quite striking in these testimonies. This is a mutual commitment among them on the one hand, with the promoted moqaddem on the other, to which the ikhs chiefs subscribe. It obligates them as it obligates the moqaddem, and if the latter, curiously enough, does not figure in the act it is because the consensus of the patres is deemed to entail his conditioned adherence on the basic points stipulated by the document. A contract thus becomes the law of the group.

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The clauses most often constitute a veritable tariffed charter. It is rare to read, as in this document of 961 Heg. : 1583 (Idaw Geryun), that the moqaddem and his assistants "will take" what they please. Such a tone is isolated. In the totality of the cases it is a matter of a minute tariffication. A large number of these documents has been collected by us in the high valley.

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671 of the person: shares of benefice of a saint, tisura (trans. of the
675 Arabic futūh'āt), of the right to mutual assistance, tiwizi, of
421 "protection," etc. There one /389/ is at the very antipode of
182 what one imagines of an "ancient" law.

671 What is to be said about this division of labor that not only
182 qualifies, in the landed-property procedure, judges outside the
[692] group, but jealously denies competence to the temporal chief?
These careful delimitations, although undoubtedly from the most
authentic foundation of the Chleuh/Shluh/ society, appear ir-
reducible to archaism. Nevertheless the splitting of the judiciary
instance obeys exigencies of recourse to the outside, of pause in
the course of the joust, and, in short, of rejection of responsibility
by the group, which express obscure traditional sentiments. This
gives rise nonetheless to a procedure of scholarly type, written and
aspiring to cityness. Traits undeniably "advanced": condemna-
tion by default that the codifications anticipate, fine for nonexecu-
tion of the sentence or for failure to answer a summons, this last
motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
182 istered by the jemâa. The latter has never really given it up. It
[634] is even for this purpose that it deploys the most initiatives and
most willingly exercises its legislative function. But let us note
that this penal law, based on pecuniary composition, a composi-
tion duly tariffed, evinces a singular institutional maturity.
While the gentilitia structure inspires the agrarian order, it is
effaced, in the penal one, before something that is clearly of
the public law, and felt as such.

695 The plural oath has retained its role. It concludes all litiga-
182 tions that the writing does not determine. But this restriction is
[691] already quite important. And moreover, even where it keeps all
its value, the oath has been driven into a reduced position: no
longer of sworn law -- but of a second element of a procedure
begun on an intellectual and profane plane. The richness of the
elements of magico-religious order that one finds here and there
in this part of the system cannot efface the contrary aspects,
which are also striking. Certainly it is possible to suppose that

/388 cont./

671 passed over in a block to the principles of importation, to the
779 point that it is necessary to look very attentively and very far in
182 order to find what it dissembles. More intact, marriage com-
bines, to the exclusion of any liturgical aspect, old practices
marking the communitarian intensity and a very acute contrac-
tual character. In this genre the institution, which comes to a
sort of co-operative ratiocination, outbids Islam. Under this
strong notion of individual acquiescence, under the adjacent ideas on
which depend the parsimony of the emigrant serving for the
resilience of sales, or the peasant parsimony serving for their
consolidation, or the bitter dispute between the familial inheri-
tance and the avarice of each one, are glimpsed a play of in-
vestments and almost of agio, a permanent inflation brought by
the abundance of importations of cash and the scarcity of lands:
so many traits that one cannot consider as recent.

671 Quite on the inverse, here is its very modern cachet. The
675 mobility of civil rights attains an almost citylike rhythm here.
421 The personal value of the obligation, the element of intuitus
182 personae inherent in the contract disappear before a great latitude
of negotiation and interchangeability. Thus in the twuliya,
"transfer of the rights of the taker, "in the istidkāl, "transfer of
successoral rights," and in the unconditional capacity to consti-
tute "mandatory," lukil. The formularies are applied to render
by redundances the substitution thus realized. One reads, for
example, in a twuliya of the a. Urgan, 906 Heg.: 1654, the
following expression: tawliya qah'th'a wa'starkaba-hu ff
sarjati-hi wa nazzala-hu ff mah'alli-hi, "valid transfer: he had
it get up on his saddle (cf. chl. /Shluh/ tarikt, name given to
the substitution), and put it (lit. "got down," cf. chl. /Shluh/
verb zuggez, in the same sense) in its proper place." Transmis-
sibility of contractual obligations, infinite play of credit, free-
dom in representation: all that constitutes a sort of rejoinder to
the unwritten laws of the equilibrium between ikhs-s and of
patrimonial permanence. This agility of the mobilizations and
substitutions extends even to the most unexpected objects, and
which one would believe most bound to the identity, truly mystic.

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181 The outside contribution clashes more with the local authenticity, and it more willingly, one might say, accepts it. From
177 day to day the system increases its amplitude, magnifies its virtuosity to welcome. The Mussulman exclusion of usury is going to be fashioned in it with an immemorial practice of credit with interest. The preferences of the fiqh for the contract, which
(177) it substitutes every time it can for the rite or the statute, are
(175) adopted with enthusiasm by this communitarian society, which goes further. In that the fiqh will not only be accepted, but surpassed, caricatured. The milieu has brought into play its prodigious agility of means, its dangerous munificence of gifts. Acrobatic conciliation with its profound, and in a sense parodic, options.

121 One is not sure in fact that a certain play, some incertitude, indeed even this vagueness that so opportunely authorizes bilingualism, are not contrived as evasion. Game aspect, ruse aspect, surprise aspect, absurdity aspect: so many, if I may venture to say it, relief escapements left to the ennui of the honest Chleuh /Shluh/ man, which mortify both his own ideal and the adventure of the times.

The system of the Seksawa, or of another such of these populations, naturally does not present itself as a body of doctrine, even though the preceding analyses have, perhaps to excess, indicated the part of the deliberate. It is especially a technical ensemble corresponding to an ensemble of emotions, to a certain awareness of the just and the unjust. This feeling, it is history that has created it. Now this is a history of retreats and defeats.
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175 The decrecendo of hope undoubtedly began among the Seksawa with the construction of the citadel of al-Qāhira, which pushed them back toward the mountains. Elsewhere, with other events, standing out from a general failure: /393/ the one that sanctioned in the last third of the thirteenth century the installation of the Mérinides at Marrakech, among the last jumps of Almohadism. For our Seksawa, these jumps lasted throughout the fourteenth century.

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131 XI. The minor chiefs of the oases of the South. -- One might be tempted to regard the minor chiefs of the desert oases that exist on the south versant of the Anti-Atlas, in the Moya-Dra /Middle Dra/ and the Dadès, at the boundary of the country inhabited by the sedentary Berbères /Berbers/ of the mountains of the Sous, as amghars similar to the ones whose appearance and first successes we have just studied here.

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642 It seems, however, that in this region other influences are being exerted, of a quite different nature, which favor the establishment and consolidation of that "despotic power" described so well by de Foucauld (2).

2. De Foucauld, Reconnaissance, pp. 111, 127, 128, 131, 145.

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177 The social milieu, in fact, appears to be more propitious for the persistence of large families in the vicinity of the Sahara. Among the Zenaga, the Ida Ou Blal, the 'Alt Amer, the Mesgita, where small dynasties of amghars have been firmly established for long generations, Arab influences are numerous, and the hereditary transmission of command is one of the most constant characteristics of the social organization of the nomad groups (3).

3. G. Marçais, Les Arabes en Berbérie /The Arabs in Barbary/, pp. 704, 705.

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675 Besides, there exist in these regions other institutions whose role easily explains the importance assumed by the heads of the "ikhs," powerful and brave: individual protection and vassalage. Near the desert the necessities of trade and travel in fact lead to the conclusion of pacts with notables capable of having the life and property of foreigners respected; these are true contracts, to which the name of "debiha" is given, and the power of a sheik is measured by the number of "debiha" that he possesses, whether he has accepted them directly or inherited them.